

SHERREL A. NEELY
Claimant

RACO MACHINE, INC.
Respondent

FEDERATED MUTUAL INSURANCE COMPANY
Insurance Carrier

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ORDER

ISSUES

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant seeks medical treatment and temporary total disability benefits for injury to her shoulders and neck which she alleges occurred on October 5, 1998, from deburring parts in the course of her employment for respondent. Respondent, on the other hand, contends claimant did not injure her neck or shoulders on the date in question. Respondent contends the only injury to claimant's neck and shoulders occurred either in 1990 while working for another employer and/or at home when claimant fell off her porch in July 1998.

After reviewing the record, the Board concludes claimant has established by a preponderance of the credible evidence that the work she performed for respondent on October 5, 1998, aggravated an earlier injury to her neck and shoulders.

Respondent has introduced medical records relating to claimant's injury in 1990. Claimant and her husband have testified as to the residual effects from that injury. From

review of the record, it appears surgery was recommended for a herniated disc in the lumbar spine but claimant declined. The injury to the neck appears to have been a sprain or strain. Although claimant acknowledges that she has had occasional problems with her neck since that date, both she and her husband indicated the neck symptoms had not been a serious problem before the October 5 injury. From review of the evidence it seems unlikely that the 1990 injury alone produced the current complaints.

The July 1998 injury offers a more probable source, more probable than the 1990 injury, of claimant's current problems. In July 1998, claimant fell off her porch at home, fractured several of her ribs, and was off work for approximately 12 weeks. While the initial treatment focused on the ribs, claimant complained of thoracic and cervical spine pain at several visits to Dr. Joseph M. Baker in late September 1998. Claimant seeks to minimize those complaints but they were made shortly before the injury alleged here. Claimant was released to return to work by Dr. Baker, on October 2, 1998, without Dr. Baker seeing claimant.

Nevertheless, the record as a whole convinces the Board that claimant did aggravate her neck problem at work on October 5, 1998. Claimant testified that her work that day involved deburring hinges which weighed 40 to 50 pounds. Respondent assigned someone to help her move the hinges, but claimant testified that she turned them over. The next day her neck had become significantly more painful than before and she was unable to work. The treating physician, Dr. Baker, has provided his opinion that claimant "re-aggravated" her neck and back pain by returning to work. It remains to be determined whether the work caused permanent injury, but the Board agrees that the work at least aggravated a preexisting problem. The Administrative Law Judge, therefore, did not exceed his jurisdiction when he ordered respondent to provide medical treatment and pay temporary total disability benefits.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge John D. Clark on April 27, 1999, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July 1999.

BOARD MEMBER

c: Dennis L. Phelps, Wichita, KS
Vincent A. Burnett, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director